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THE TRYAL

OF

William Penn & William Mead

THE TRYAL

OF

William Penn & William Mead

FOR

CAUSING A TUMULT

At the SESSIONS *held at the* OLD BAILEY
in LONDON
the 1ST, 3D, 4TH, *and* 5TH *of* SEPTEMBER
1670

Done by Themselves

TRANSCRIBED *from the* COMPLEAT COLLECTION
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To the Memory

OF

THOMAS JEFFERSON

WHICH NEEDS FREQUENT

REFRESHING

FOREWORD

LIBERTY, Equality and Fraternity have been preached through all time but it was left for William Penn, the Quaker, to come nearer establishing the ideal of this Trinity than any other being called Human before or since his day.

It may be argued that more was due to the Faith he held than to the Man. Yet this must be answered that it took some more than ordinary Man to absorb and fulfill the requirements of such a Faith. There have been many Quakers and but one Penn!

Born on the 15th of October, 1644, in the angry days of the Roundhead Revolt, his early years were spent in an intensely religious atmosphere that saturated his soul, but at the same time bred detestation of bigotry and persecution. If he seemed to be performing out of his class because of his family's eminence, it should be recalled that this was acquired, not inherited. His father, Admiral Sir William Penn, was the son of Giles Penn, a merchant navigator trading into the Mediterranean, and his

wife Margaret Jasper, daughter of Hans Jasper, a sea trader of Rotterdam: From these forbears the youth received independence of thought and firmness of mind. He was therefore less of an anomaly than he appeared to be.

The rigid religious rule of Cromwell, under which he had spent his youthful years, had passed and in its stead befell a period of loose living and easy ways. Puritanism, though speaking and acting in the name of Liberty, possessed but little of that quality either for mind or body. In setting up for the great cause he fared as well, or better, with all his persecutions, than did his Quaker brethren in that New England which had been founded for opinion's sake.

Entering Oxford at fifteen the boy soon fell under the influence of Thomas Loe, a preacher of Quaker doctrine and became imbued with his teachings. This clashed at once with his surroundings and the College requirements. He refused to attend chapel or to wear the customary gown, deeming it a sort of surplice. A little group of students who had accepted Loe's principles joined him in this obduracy, going so far as to strip the gowns from the persons

of willing wearers. This led to his expulsion.

Samuel Pepys mentions him in his diary on October 31st, 1661, as having "but come from Oxford" and meeting his father at Pepys' house. On the 25th of January, 1662, the Admiral discussed with Pepys a plan for sending his son to Cambridge or some private college. Pepys undertook to write Dr. Fairbrother and inquire into the merits of Hezekiah Burton at Magdalen, as an instructor for the difficult youth. It was impossible to fit him into any school under the dominion of the Church of England and in wrath his father forbade him the house. His mother interceded, with the result that he was sent to Europe for the grand tour, presumably with outward success, for on August 6, 1664, Mrs. Pepys informs Samuel that "Mr. Pen, Sir William's son, is come back from France and come to visit her. A most modish person, grown, she says, a fine gentleman."

After dinner on the 30th of the same month "comes Mr. Pen to visit me, and staid an hour talking with me. I perceive something of learning he has got, but a great deal, if not too much of the vanity of

the French garb and affected manner of speech and gait. I fear all real profit he hath made of his travel will signify little."

The home coming soon stripped Penn of the "vanity of the French garb," and he became once more a problem. He tried the study of law, but could not interest himself in it. To keep him out of the way and repress his dangerous thoughts he was given the management in 1665, of an estate owned by the Admiral in Ireland, where he went and did as he pleased, falling in again with Thomas Loe and resuming his Quaker views. December 29th, 1667, Pepys records a call from Mrs. Turner ". . . and there, among other talk, she tells me that Mr. William Pen, who is lately come over from Ireland, is a Quaker again, or some very melancholy thing; that he cares for no company, nor comes into any; which is a pleasant thing, after his being abroad so long, and his father such a hypocritical rogue and at this time an Atheist."

This return he signalized by intense activity in pressing Quakerism upon the public, to the vexation of his father who was one of the notables of England, as Admiral both under Cromwell and the King. He

had commanded the fleet of the Lord Protector which wrested the rich Island of Jamaica from Spain and as one of the three commissioners of the Navy, laid the foundation for that British fleet which has ever since played so large a part in the history of the world. He was the practical man of the commission, from whom James, Duke of York, afterwards, and very briefly King, took most of his advice. He reformed the higgledy-piggledy naval tactics of the time and taught the commanders to attack the enemy in line, the most important change in the sea annals of his country. Knighted in 1665 for service against the Dutch he failed of the peerage because of the public prejudice against his son, which deterred the King from giving him an honor as high as he deserved. As Clerk of the Acts, Pepys was much in contact with him socially and officially. The famous diary teems with references, many of them convivial, others most unkind. He was faithful to the commonwealth as long as it was faithful to itself. Perceiving that it could not hold together after the death of Cromwell he joined with George Monk in bringing about the restoration of the Stuarts.

Against this background of paternal distinction, the young reformer shone invidiously and brought his father great chagrin by his association with carpenters and weavers in their non-conformist agitations. He preached in poor halls and in the streets. The newspaper, not having arrived, he took to pamphleteering to spread his doctrines. This activity reached a crisis in 1669. Writing in his diary under date of February 12, 1669, Pepys says: ". . . Pelling hath got me W. Pen's book against the Trinity. I got my wife to read it to me; and I find it so well writ as, I think, it is too good for him ever to have writ it, and it is a serious sort of book not fit for everybody to read."

The extended title of this work was "The Sandy Foundation Shaken—or those . . . Doctrines of one God subsisting in three distinct and separate persons; the impossibility of God's pardoning persons by an imputative refuted from the authority of scripture testimonies and right reason," etc.

It was a drastic review of the doctrine of the Trinity and as the title implies, undertook to prove that the majestic edifice of the State Church was not founded upon a rock. It created much excitement and

speedily landed its author in the Tower. Here he remained nine months, unrepentant and writing more pious sedition, to wit: "No Cross No Crown," and "Innocency With Her Open Face." These were further polemics against Episcopacy.

The King having no heart for persecution, and the Duke of York, who was a firm friend, contrived to have the prisoner released on the 4th of August and turned over to his father to be transported to some spot where he would be less troublesome. This plan was not seriously carried out. Indeed the Admiral's days were numbered. He died after a year's illness, on the 16th of September, 1670.

Penn's prominence and influence increased with the death of his father. It was plain that no ordinary mind directed his actions. Respect followed. He took much part in public matters and as umpire in a dispute between Fenwick and Byllinge, two Quakers, over some land rights in New Jersey, he developed an interest in the New World and planned to found in it a place of refuge for those persecuted in Old and New England for opinion's sake. This desire was readily carried out. By fortunate

chance the Crown owed Admiral Penn's estate some $80,000. To pay this debt and be rid of an agitator, the shrewd King made an easy adjustment in 1681 by handing over to the heir a vast province between the Delaware and the Ohio, in return for an annual tribute of two beaver skins, to be paid for ninety-nine years.

Here the idealist created his elysium and came as close to making one as the curious animal he sought to benefit would permit. The King set forth in writing the Grant that it was due "the memory and merits of Sir William Penn in divers services, and particularly his conduct, courage and discretion under our dearest brother, James, Duke of York, in that signal battle and victory fought and obtained against the Dutch fleet commanded by the Heer Van Opdam, in 1665."

Not to be outdone by his Royal brother, James threw in the Province of Delaware to which he held the fee, "out of a special regard to the memory and many faithful and eminent services heretofore performed by the said Sir William Penn to his Majesty and Royal Highness." This under date of August 21st, 1682.

It was Penn's purpose to call his Paradise Sylvania, because of its wooded vales, but the King, with his obligation to the Admiral well in mind neatly prefixed "Penn" to the fanciful selection and it became justly and rightly "Pennsylvania" not in memory of William, but of his valiant father.

Charles II was an able politician and understood human nature. Often accused of ingratitude and seldom deserving the charge, with a willingness to perform a good action as readily as a bad one, he acted perhaps in languid memory of the mistake made by his heedless father when he stayed the departure of Cromwell for the New World, where he had resolved to go "and never see England more,"—determining that there should be no repetition of history so far as he was concerned by repressing a zealot in narrow quarters near home.

Thus Charles for once at least, belied the couplet scrawled upon his chamber door by the ribald Earl of Rochester:

> Here lies our sovereign lord the King
> Whose word no man relies on;
> He never says a foolish thing
> Nor ever does a wise one.

His sayings, Charles aptly replied, were his own; his acts those of his ministers. He ordered well indeed when he placed Penn where he did in the New World and he meant wisely when he decreed that the red races should possess, free and forever, the lands beyond the Alleghanies. With Penn's venture we need have no more to do than to recall that so long as his control lasted or his wishes extended, the Pennsylvania Indians and their cousins of New York and Ohio, were at peace with the whites; that his words and those of his agents were trusted; that Pennsylvania sheltered the persecuted Palatines and that the Liberty Bell first rang in the city he had named Philadelphia — the City of Brotherly Love!

The Trial here recited began in London, on the first of September, 1670, a fortnight before his father's death, while the disturbance of which it was the outgrowth, occurred on the fourth of August preceding.

The text is repeated from the report embedded in the second volume of the four great folios, comprising "A Compleat Collection of State Tryals," covering the period of English justice and injustice from the reign of King Henry the Fourth to

the end of that of Anne, printed for six venturesome London booksellers, Timothy Goodwin, John Walthoe, Benjamin Tooke, John Darby, Jacob Tonson, and John Walthoe, Junior, in 1719, where is found this first record of a legal effort to punish free speech among the English race — and by the same token to vindicate it. Reported by the accused, it no less reads fair. The "Observer" whose comments interlard and conclude the "Tryal" was Penn. It was a rare proceeding in which both prisoners and jury ended up in jail for their obduracy in maintaining that right to speak as we may, which is still one of the most difficult to maintain, and yet remains the foundation of human liberty.

D. C. S.

Cos Cob, Conn.,
March 15, 1919.

THE TRYAL of WILLIAM PENN *and* WILLIAM MEAD, *at the Sessions held at the* Old Baily *in* London, *the 1st, 3d, 4th, and 5th of* September, *1670. Done by themselves.*

PRESENT

SAM. STARLING, *Mayor*
THO. HOWEL, *Recorder.*
THO. BLOODWORTH, *Alderm.*
WILLIAM PEAK, *Alderm.*
JOHN ROBINSON, *Alderm.*
RICHARD FORD, *Alderman.*
JOSEPH SHELDEN, *Alderman.*
JOHN SMITH, JAMES EDWARDS, } *Sheriffs.*
RICHARD BROWNE.

CRYER. O Yes, *Thomas Veer, Edward Bushel, John Hammond, Charles Milson, Gregory Walklet, John Brightman, William Plumsted, Henry Henley, Thomas Damask, Henry Michel, William Lever, John Baily.*

The Form of the OATH.

"You shall well and truly Try, and true "Deliverance make betwixt our Sovereign "Lord the King, and the Prisoners at the "Bar, according to your Evidence. *So "help you God.*"

That *William Penn*, Gent. and *William*

Mead, late of *London,* Linnen-Draper, with divers other Persons to the Jurors unknown, to the Number of 300, the 14th Day of *August,* in the 22d Year of the King, about Eleven of the Clock in the Forenoon, the same Day, with Force and Arms, *&c.* in the Parish of *St. Bennet Gracechurch* in *Bridge-Ward, London*, in the Street called *Gracechurch-Street,* unlawfully and tumultuously did Assemble and Congregate themselves together, to the Disturbance of the Peace of the said Lord the King: And the aforesaid *William Penn* and *William Mead,* together with other Persons to the Jurors aforesaid unknown, then and there so Assembled and Congregated together; the aforesaid *William Penn*, by Agreement between him and *William Mead* before made, and by Abetment of the aforesaid *William Mead,* then and there, in the open Street, did take upon himself to Preach and Speak, and then and there did Preach and Speak unto the aforesaid *William Mead,* and other Persons there, in the Street aforesaid, being Assembled and Congregated together, by Reason whereof a great Concourse and Tumult of People in the Street aforesaid, then and there, a long

time did remain and continue, in contempt of the said Lord the King, and of his Law, to the great Disturbance of his Peace; to the great Terror and Disturbance of many of his Leige People and Subjects, to the ill Example of all others in the like Case Offenders, and against the Peace of the said Lord the King, his Crown and Dignity.

What say you, *William Penn* and *William Mead*, are you Guilty, as you stand indicted, in Manner and Form, as aforesaid, or Not Guilty?

PENN. It is impossible, that we should be able to remember the Indictment verbatim, and therefore we desire a Copy of it, as is customary in the like Occasions.

RECORDER. You must first plead to the Indictment, before you can have a Copy of it.

PEN. I am unacquainted with the Formality of the Law, and therefore, before I shall answer directly, I request two Things of the Court. First, that no Advantage may be taken against me, nor I deprived of any Benefit, which I might otherwise have received. Secondly, that you will promise me a fair hearing, and liberty of making my Defence.

COURT. No Advantage shall be taken against you; you shall have Liberty; you shall be heard.

PEN. Then I plead Not guilty in Manner and Form.

CLERK. What sayest thou, William Mead, art thou Guilty in Manner and Form, as thou standest indicted, or Not guilty?

MEAD. I shall desire the same Liberty as is promised William Penn.

COURT. You shall have it.

MEAD. Then I plead Not guilty in Manner and Form.

The Court adjourn'd until the Afternoon.

CRYER. O Yes, *&c.*

CLER. Bring *William Penn* and *William Mead* to the Bar.

OBSERV. The said Prisoners were brought, but were set aside, and other Business prosecuted. Where we cannot choose but observe, that it was the constant and unkind Practices of the Court to the Prisoners, to make them wait upon the Trials of Felons and Murderers, thereby designing, in all probability, both to affront and tire them.

After five Hours Attendance, the Court broke up and adjourned to the third Instant.

The third of *September* 1670, the Court sate.

CRYER. O Yes, *&c.*

CLER. Bring *William Penn* and *William Mead* to the Bar.

MAYOR. Sirrah, who bid you put off their Hats? Put on their Hats again.

OBSER. Whereupon one of the Officers putting the Prisoners Hats upon their Heads (pursuant to the Order of the Court) brought them to the Bar.

RECORD. Do you know where you are?

PEN. Yes.

RECORD. Do not you know it is the King's Court?

PEN. I know it to be a Court, and I suppose it to be the King's Court.

RECORD. Do you not know there is Respect due to the Court?

PEN. Yes.

RECORD. Why do you not pay it then?

PEN. I do so.

RECORD. Why do you not pull off your Hat then?

PEN. Because I do not believe that to be any Respect.

RECORD. Well, the Court sets forty Marks a piece upon your Heads, as a Fine for your Contempt of the Court.

PEN. I desire it might be observed, that we came into the Court with our Hats off (that is, taken off) and if they have been put on since, it was by Order from the Bench; and therefore not we, but the Bench should be fined.

MEAD. I have a Question to ask the Recorder. Am I fined also?

RECORD. Yes.

MEAD. I desire the Jury, and all People to take notice of this Injustice of the Recorder; who spake to me to pull off my Hat? and yet hath he put a Fine upon my Head. O fear the Lord, and dread his Power, and yield to the Guidance of his Holy Spirit, for he is not far from every one of you.

The Jury sworn again.

OBSER. *J. Robinson,* Lieutenant of the *Tower,* disingenuously objected against—— *Bushel,* as if he had not kiss'd the Book, and therefore would have him sworn again;

tho' indeed it was on purpose to have made use of his Tenderness of Conscience in avoiding reiterated Oaths, to have put him by his being a Jury-man, apprehending him to be a Person not fit to answer their Arbitrary Ends.

The Clerk read the Indictment, as aforesaid.

CLERK. Cryer, Call *James Cook* into the Court, give him his Oath.

CLERK. *James Cook*, lay your Hand upon the Book.

The Evidence you shall give to the Court, betwixt our Sovereign the King, and the Prisoners at the Bar, shall be the Truth, and the whole Truth, and nothing but the Truth. So help you God.

COOK. I was sent for, from the *Exchange*, to go and disperse a Meeting in *Gracechurch-Street*, where I saw *Mr. Penn* speaking to the People, but I could not hear what he said, because of the Noise; I endeavoured to make way to take him, but I could not get to him for the Crowd of People; upon which *Capt. Mead* came to

me, about the Kennel of the Street, and desired me to let him go on; for when he had done, he would bring *Mr. Penn* to me.

COURT. What Number do you think might be there?

COOK. About three or four Hundred People.

COURT. Call *Richard Read*, give him his Oath.

READ being sworn was ask'd, what do you know concerning the Prisoners at the Bar?

READ. My Lord, I went to Gracechurch-Street, where I found a great Crowd of People, and I heard *Mr. Penn* preach to them; and I saw Capt. Mead speaking to Lieutenant *Cook,* but what he said, I could not tell.

MEAD. What did *William Penn* say?

READ. There was such a great Noise, that I could not tell what he said.

MEAD. Jury, observe this Evidence, He saith he heard him Preach, and yet faith, he doth not know what he said.

Jury, take notice, he swears now a clean contrary thing to what he swore before the Mayor when we were committed: For now he swears that he saw me in *Gracechurch-*

Street, and yet swore before the Mayor, when I was committed, that he did not see me there. I appeal to the Mayor himself, if this be not true. But no Answer was given.

COURT. What Number do you think might be there?

READ. About four or five hundred.

PENN. I desire to know of him what Day it was?

READ. The 14th Day of August.

PEN. Did he speak to me, or let me know he was there; for I am very sure I never saw him.

CLER. Cryer, call—— ——into the Court.

CLER. Give him his Oath.

—— My Lord, I saw a great Number of People, and Mr. *Penn* I suppose was speaking; I see him make a Motion with his Hands, and heard some Noise, but could not understand what he said. But for Capt. Mead, I did not see him there.

REC. What say you, Mr. *Mead,* were you there?

MEAD. It is a Maxim in your own Law, *Nemo tenetur accusare seipsum*, which if it be not true Latin, I am sure it is true Eng-

lish, *That no Man is bound to accuse himself:* And why dost thou offer to ensnare me with such a Question? Doth not this shew thy Malice? Is this like unto a Judge, that ought to be Counsel for the Prisoner at the Bar?

REC. Sir, hold your Tongue, I did not go about to ensnare you.

PEN. I desire we may come more close to the Point, and that Silence be commanded in the Court.

CRY. O yes, all manner of Persons keep Silence upon Pain of Imprisonment—— Silence Court.

PEN. We confess our selves to be so far from recanting, or declining to vindicate the Assembling of our selves to Preach, Pray, or Worship the Eternal, Holy, Just God, that we declare to all the World, that we do believe it to be our indispensable Duty, to meet incessantly upon so good an Account; nor shall all the Powers upon Earth be able to divert us from reverencing and adoring our God who made it.

BROWN. You are not here for worshipping God, but for breaking the Law; you do yourselves a great deal of Wrong in going on in that Discourse.

PEN. I affirm I have broken no Law, nor am I guilty of the Indictment that is laid to my Charge; and to the End the Bench, the Jury, and my self, with these that hear us, may have a more direct Understanding of this Procedure, I desire you would let me know by what Law it is you prosecute me, and upon what Law you ground my Indictment.

REC. Upon the Common Law.

PEN. Where is that Common Law?

REC. You must not think that I am able to run up so many Years, and over so many adjudged Cases, which we call Common Law, to answer your Curiosity.

PEN. This Answer I am sure is very short of my Question, for if it be Common, it should not be so hard to produce.

REC. Sir, will you plead to your Indictment?

PEN. Shall I plead to an Indictment that hath no Foundation in Law? If it contain that Law you say I have broken, why should you decline to produce that Law, since it will be impossible for the Jury to determine, or agree to bring in their Verdict, who have not the Law produced, by which they should measure the

Truth of this Indictment, and the Guilt, or contrary of my Fact?

REC. You are a sawcy Fellow, speak to the Indictment.

PEN. I say, it is my place to speak to Matter of Law; I am arraign'd a Prisoner; my Liberty, which is next to Life it self, is now concerned: You are many Mouths and Ears against me, and if I must not be allowed to make the best of my Case, it is hard. I say again, unless you shew me, and the People, the Law you ground your Indictment upon, I shall take it for granted your Proceedings are meerly Arbitrary.

Obser. *At this time several upon the Bench urged hard upon the Prisoner to bear him down.*

REC. The Question is, whether you are guilty of this Indictment?

PEN. The Question is not whether I am guilty of this Indictment, but whether this Indictment be legal. It is too general and imperfect an Answer, to say it is the Common Law, unless we knew both where, and what it is: For where there is no Law, there is no Transgression; and that Law which is not in being, is so far from being Common, that it is no Law at all.

REC. You are an impertinent Fellow,

will you teach the Court what Law is? It's *Lex non scripta*, that which many have studied thirty or forty Years to know, and would you have me to tell you in a Moment?

PEN. Certainly, if the Common Law be so hard to be understood, it's far from being very Common; but if the Lord *Cook*, in his *Institutes*, be of any Consideration, he tells us, That Common Law is Common Right, and that Common Right is the Great Charter-Privileges: Confirmed 9 *Hen.* 3. 29. 25 *Edw.* I. 1. 2 *Edw.* 3. 8. *Cook Instit.* 2 p. 56.

REC. Sir, you are a troublesome Fellow, and it is not for the Honour of the Court to suffer you to go on.

PEN. I have asked but one Question, and you have not answer'd me; tho' the Rights and Privileges of every *Englishman* be concerned in it.

REC. If I should suffer you to ask Questions till to Morrow Morning, you would be never the wiser.

PEN. That is according as the Answers are.

REC. Sir, we must not stand to hear you talk all Night.

PEN. I design no Affront to the Court,

but to be heard in my just Plea: And I must plainly tell you, that if you will deny me Oyer of that Law, which you suggest I have broken, you do at once deny me an acknowledged Right, and evidence to the whole World your Resolution to sacrifice the Privileges of *Englishmen* to your sinister and Arbitrary Designs.

REC. Take him away. My Lord, if you take not some Course with this pestilent Fellow, to stop his Mouth, we shall not be able to do any thing to Night.

MAYOR. Take him away, take him away, turn him into the Bale-dock.

PEN. These are but so many vain Exclamations; is this Justice or true Judgment? Must I therefore be taken away because I plead for the Fundamental Laws of *England?* However, this I leave upon your Consciences, who are of the Jury (and my sole Judges) that if these Ancient Fundamental Laws, which relate to Liberty and Property, and (are not limited to particular Persuasions in Matters of Religion) must not be indispensibly maintained and observed. Who can say he hath Right to the Coat upon his Back? Certainly our Liberties are openly to be invaded, our Wives

to be ravished, our Children slaved, our Families ruined, and our Estates led away in Triumph, by every sturdy Beggar and malicious Informer, as their Trophies, but our (pretended) Forfeits for Conscience sake. The Lord of Heaven and Earth will be Judge between us in this Matter.

REC. Be silent there.

PEN. I am not to be silent in a Case wherein I am so much concerned, and not only my self, but many ten thousand Families besides.

OBSER. They having rudely haled him into the Bale-dock, *William Mead* they left in Court, who spake as followeth.

MEAD. You Men of the Jury, here I do now stand, to answer to an Indictment against me, which is a Bundle of Stuff, full of Lyes and Falshoods; for therein I am accused, that I met *Vi & armis, illicite & tumultuose:* Time was, when I had Freedom to use a carnal Weapon, and then I thought I feared no Man; but now I fear the Living God, and dare not make use thereof, nor hurt any Man; nor do I know I demeaned my self as a tumultuous Person: I say, I am a peaceable Man, therefore it is a very proper Question what *William*

Penn demanded in this Case, An Oyer of the Law, in which our Indictment is grounded.

REC. I have made Answer to that already.

MEAD. Turning his Face to the Jury, saith, you Men of the Jury, who are my Judges, if the Recorder will not tell you what makes a Riot, a Rout, or an unlawful Assembly, *Cook,* he that once they called the Lord *Cook*, tells us what makes a Riot, a Rout, and an unlawful Assembly—— A Riot is when three, or more, are met together to beat a Man, or to enter forcibly into another Man's Land, to cut down his Grass, his Wood, or break down his Pales.

OBSER. Here the Recorder interrupted him, and said, I thank you Sir, that you will tell me what the Law is, scornfully pulling off his Hat.

MEAD. Thou mayst put on thy Hat, I have never a Free for thee now.

BROWN. He talks at random, one while an Independent, another while some other Religion, and now a Quaker, and next a Papist.

MEAD. *Turpe est doctori cum culpa redarguit ad ipsum.*

MAY. You deserve to have your Tongue cut out.

REC. If you discourse on this Manner, I shall take Occasion against you.

MEAD. Thou didst promise me, I should have fair Liberty to be heard; why may I not have the Privilege of an *Englishman?* I am an *Englishman,* and you might be ashamed of this dealing.

REC. I look upon you to be an Enemy to the Laws of *England*, which ought to be observed and kept, nor are you worthy of such Privileges, as others have.

MEAD. The Lord is Judge between me and thee in this Matter.

OBSER. Upon which they took him away into the Bale-dock, and the Recorder proceeded to give the Jury their Charge, as followeth.

REC. You have heard what the Indictment is. It is for preaching to the People, and drawing a tumultuous Company after them, and Mr. *Penn* was speaking; if they should not be disturbed, you see they will go on; there are three or four Witnesses that have proved this, that he did preach there; that Mr. *Mead* did allow of it; after this, you have heard by substantial Wit-

nesses what is said against them: Now we are upon the Matter of Fact, which you are to keep to, and observe, as what hath been fully sworn, at your Peril.

OBSER. The Prisoners were put out of the Court into the Bale-dock, and the Charge given to the Jury in their Absence, at which *W. P.* with a very raised Voice, it being a considerable distance from the Bench, spake.

PEN. I appeal to the Jury, who are my Judges, and this great Assembly, whether the Proceedings of the Court are not most Arbitrary, and void of all Law, in offering to give the Jury their Charge in the Absence of the Prisoners; I say, it is directly opposite to, and destructive of, the undoubted Right of every *English* Prisoner, as *Cook* in the 2 *Instit.* 29. on the Chap. of *Magna Charta*, speaks.

OBSER. The Recorder being thus unexpectedly lash'd for his extrajudicial Procedure, said, with an inraged Smile.

REC. Why, ye are present, you do hear, do you not?

PEN. No thanks to the Court, that commanded me into the Bale-dock; and you of the Jury take notice, that I have not been

heard, neither can you legally depart the Court, before I have been fully heard, having at least ten or twelve material Points to offer, in order to invalid their Indictment.

REC. Pull that Fellow down, pull him down.

MEAD. Are these according to the Rights and Privileges of *Englishmen*, that we should not be heard, but turned into the Bale-dock, for making our Defence, and the Jury to have their Charge given them in our Absence; I say these are barbarous and unjust Proceedings.

REC. Take them away into the Hole: To hear them talk all Night, as they would, that I think doth not become the Honour of the Court, and I think you (i. e. the Jury) your selves would be tired out, and not have Patience to hear them.

OBSER. The Jury were commanded up to agree upon their Verdict, the Prisoners remaining in the stinking Hole. After an Hour and half's time eight came down agreed, but four remained above; the Court sent an Officer for them, and they accordingly came down. The Bench used many unworthy Threats to the four that dissented;

and the Recorder, addressing himself to *Bushel,* said, *Sir, You are the Cause of this Disturbance, and manifestly shew your self an Abettor of Faction; I shall set a Mark upon you, Sir.*

J. ROBINSON. Mr. *Bushel,* I have known you near this fourteen Years; you have thrust your self upon this Jury, because you think there is some Service for you. I tell you, you deserve to be indicted more than any Man that hath been brought to the Bar this Day.

BUSHEL. No, Sir *John*, there were threescore before me, and I would willingly have got off, but could not.

BLOODW. I said, when I saw Mr. *Bushel,* what I see is come to pass, for I knew he would never yield. Mr. *Bushel*, we know what you are.

MAY. Sirrah, you are an impudent Fellow, I will put a Mark upon you.

OBSER. They used much menacing Language, and behaved themselves very imperiously to the Jury, as Persons not more void of Justice than sober Education: After this barbarous Usage, they sent them to consider of bringing in their Verdict, and after some considerable time they returned to the

Court. Silence was call'd for, and the Jury call'd by their Names.

CLER. Are you agreed upon your Verdict?

JURY. Yes.

CLER. Who shall speak for you?

JURY. Our Fore-man.

CLER. Look upon the Prisoners at the Bar. How say you? Is *William Penn* Guilty of the Matter whereof he stands indicted in Manner and Form, or Not Guilty?

FORE-M. Guilty of Speaking in Grace-church-Street.

COURT. Is that all?

FORE-M. That is all I have in Commission.

REC. You had as good say nothing.

MAY. Was it not an unlawful Assembly? You mean he was speaking to a Tumult of People there?

FORE-M. My Lord, This is all I had in Commission.

OBSER. Here some of the Jury seemed to buckle to the Questions of the Court; upon which, *Bushel*, *Hammond*, and some others, opposed themselves, and said, they allowed of no such Word, as an unlawful

Assembly in their Verdict; at which the Recorder, Mayor, *Robinson* and *Bloodworth* took great occasion to villifie them with most opprobrious Language; and this Verdict not serving their Turns, the Recorder express'd himself thus.

REC. The Law of *England* will not allow you to part till you have given in your Verdict.

JURY. We have given in our Verdict, and we can give in no other.

REC. Gentlemen, you have not given in your Verdict, and you had as good say nothing; therefore go and consider it once more, that we may make an end of this troublesome Business.

JURY. We desire we may have Pen, Ink and Paper.

OBSER. The Court adjourn'd for half an Hour; which being expired, the Court returns, and the Jury not long after.

The Prisoners were brought to the Bar, and the Jury's Names called over.

CLER. Are you agreed of your Verdict?

JUR. Yes.

CLER. Who shall speak for you?

JUR. Our Fore-man.

CLER. What say you, look upon the

Prisoners: Is *William Penn* Guilty in Manner and Form, as he stands indicted, or Not Guilty?

FORE-M. Here is our Verdict, holding forth a piece of Paper to the Clerk of the Peace, which follows;

We *the Jurors, hereafter named, do find* William Penn *to be Guilty of Speaking or Preaching to an Assembly, met together in* Gracechurch-Street, *the 14th of August last, 1670. And that* William Mead is *Not guilty of the said Indictment.*

Fore-m.	*Thomas Veer,*	*Charles Milson,*
	Edward Bushel,	*Gregory Walklet,*
	John Hammond,	*John Baily,*
	Henry Henley,	*William Lever,*
	Henry Michel,	*James Damask,*
	John Brightman,	*Wil. Plumsted.*

OBSER. This both Mayor and Recorder resented as so high a rate, that they exceeded the Bounds of all Reason and Civility.

MAY. What will you be led by such a silly Fellow as *Bushel?* an impudent canting Fellow? I warrant you, you shall come no more upon Juries in haste: You are a Fore-man indeed, addressing himself to the Fore-man, I thought you had understood your Place better.

REC. Gentlemen, you shall not be dismist till we have a Verdict, that the Court will accept; and you shall be lock'd up, without Meat, Drink, Fire, and Tobacco; you shall not think thus to abuse the Court; we will have a Verdict, by the help of God, or you shall starve for it.

PEN. My Jury, who are my Judges, ought not to be thus menaced; their Verdict should be free, and not compelled; the Bench ought to wait upon them, but not forestall them. I do desire that Justice may be done me, and that the Arbitrary Resolves of the Bench may not be made the Measure of my Jury's Verdict.

REC. Stop that prating Fellow's Mouth, or put him out of the Court.

MAY. You have heard that he preach'd, that he gathered a Company of tumultuous People, and that they do not only disobey the Martial Power, but Civil also.

PEN. It is a great Mistake; we did not make the Tumult, but they that interrupted us: The Jury cannot be so ignorant, as to think, that we met there, with a Design to disturb the Civil Peace, since (1st.) we were by Force of Arms kept out of our lawful House, and met as near it in the Street,

as their soldiers would give us leave; and (2dly.) because it was no new thing (nor with the Circumstances expres'd in the Indictment) but what was usual and customary with us; 'tis very well known that we are a peaceable People, and cannot offer Violence to any Man.

OBSER. The Court being ready to break up, and willing to huddle the Prisoners to their Goal, and the Jury to their Chamber, Penn spoke as follows:

PEN. The Agreement of Twelve Men is a Verdict in Law, and such a one being given by the Jury, I require the Clerk of the Peace to record it, as he will answer it at his Peril. And if the Jury bring in another Verdict contradictory to this, I affirm they are perjur'd Men in Law. And looking upon the Jury, said, You are *Englishmen*, mind your Privilege, give not away your Right.

BUSH. &c. Nor will we ever do it.

OBSER. One of the Jury-men pleaded Indisposition of Body, and therefore desired to be dismist.

MAY. You are as strong as any of them; starve with them; and hold your Principles.

REC. Gentlemen, You must be contented with your hard Fate, let your Patience overcome it; for the Court is resolved to have a Verdict, and that before you can be dismist.

JURY. We are agreed, we are agreed, we are agreed.

OBSER. The Court swore several Persons, to keep the Jury all Night without Meat, Drink, Fire, or any other Accommodation; they had not so much as a Chamber-pot, tho' desired.

CRY. O Yes, *&c.*

OBSER. The Court adjourns till Seven of the Clock next Morning (being the 4th Instant, vulgarly call'd Sunday) at which time the Prisoners were brought to the Bar: The Court sat, and the Jury called to bring in their Verdict.

CRY. O Yes, *&c.* —— Silence in the Court, upon pain of Imprisonment.

The Jury's Names called over.

CLER. Are you agreed upon your Verdict?

JUR. Yes.

CLER. Who shall speak for you?

JUR. Our Fore-man.

CLER. What say you? Look upon the

Prisoners at the Bar. Is *William Penn* Guilty of the Matter whereof he stands indicted, in Manner and Form as aforesaid, or Not guilty?

FORE-M. *William Penn* is guilty of Speaking in *Gracechurch-Street.*

MAY. To an unlawful Assembly?

BUSH. No, my Lord, we give no other Verdict than what we gave last Night; we have no other Verdict to give.

MAY. You are a factious Fellow, I'll take a Course with you.

BLOOD. I knew Mr. *Bushel* would not yield.

BUSH. Sir *Thomas* I have done according to my Conscience.

MAY. That Conscience of yours would cut my Throat.

BUSH. No, my Lord, it never shall.

MAY. But I will cut yours so soon as I can.

REC. He has inspired the Jury; he has the Spirit of Divination, methinks I feel him. I will have a positive Verdict, or you shall starve for it.

PEN. I desire to ask the Recorder one Question, Do you allow of the Verdict given of *William Mead?*

REC. It cannot be a Verdict, because you were indicted for a Conspiracy, and one being found Not guilty, and not the other, it could not be a Verdict.

PEN. If Not guilty be not a Verdict, then you make of the Jury and *Magna Charta* but a meer Nose of Wax.

MEAD. How! is Not guilty no Verdict?

REC. No, 'tis no Verdict.

PEN. I affirm, that the Consent of a Jury is a Verdict in Law; and if *William Mead* be Not guilty, it consequently follows, that I am clear, since you have indicted us of a Conspiracy, and I could not possibly conspire alone.

OBSER. There were many Passages, that could not be taken, which past between the Jury and the Court. The Jury went up again, having received a fresh Charge from the Bench, if possible to extort an unjust Verdict.

CRY. O Yes, *&c.* Silence in the Court.

COUR. Call over the Jury. Which was done.

CLER. What say you? Is *William Penn* Guilty of the Matter whereof he stands indicted, in Manner and Form aforesaid, or Not Guilty?

FORE-MAN. Guilty of speaking in *Grace-church-Street.*

REC. What is this to the Purpose? I say, I will have a Verdict. And speaking to *Edw. Bushel*, said, You are a factious Fellow; I will set a Mark upon you; and whilst I have anything to do in the City, I will have an eye upon you.

MAY. Have you no more Wit than to be led by such a pitiful Fellow? I will cut his Nose.

PEN. It is intolerable that my Jury should be thus menaced: Is this according to the Fundamental Laws? Are not they my proper Judges by the great Charter of *England?* What hope is there of ever having Justice done, when Juries are threatened, and their Verdicts rejected? I am concerned to speak and grieved to see such Arbitrary Proceedings. Did not the Lieutenant of the Tower render one of them worse than a Felon? And do you not plainly seem to condemn such for factious Fellows, who answer not your Ends? Unhappy are those Juries, who are threatened to be fined, and starved, and ruined, if they give not in Verdicts contrary to their Consciences.

REC. My Lord, you must take a Course with that same Fellow.

MAY. Stop his Mouth; Jaylor, bring Fetters, and stake him to the Ground.

PEN. Do your Pleasure, I matter not your Fetters.

REC. Till now I never understood the Reason of the Policy and Prudence of the *Spaniards,* in suffering the Inquisition among them: And certainly it will never be well with us, till something like unto the *Spanish* Inquisition be in *England.*

OBSER. The Jury being required to go together to find another Verdict, and steadfastly refusing it (saying they could give no other Verdict than what was already given) the Recorder in great Passion was running off the Bench, with these Words in his Mouth, *I protest I will sit here no longer to hear these Things;* at which the Mayor calling, *Stay, stay,* he returned, and directed himself unto the Jury, and spoke as followeth:

REC. Gentlemen, we shall not be at this trade always with you; you will find the next Sessions of Parliament there will be a Law made, that those that will not conform shall not have the Protection of the Law.

Mr. *Lee*, draw up another Verdict, that they may bring it in special.

LEE. I cannot tell how to do it.

JUR. We ought not to be return'd, having all agreed, and set our Hands to the Verdict.

REC. Your Verdict is nothing, you play upon the Court; I say you shall go together, and bring in another Verdict, or you shall starve; and I will have you charted about the City, as in Edward the Third's time.

FORE-M. We have given in our Verdict, and all agreed to it; and if we give in another, it will be a Force upon us to save our Lives.

MAY. Take them up.

OFFIC. My Lord, they will not go up.

OBSER. The Mayor spoke to the Sheriff, and he came off of his seat, and said.

SHER. Come, Gentlemen, you must go up; you see I am commanded to make you go.

OBSER. Upon which the Jury went up; and several sworn to keep them without any Accommodation, as aforesaid, till they brought in their Verdict.

CRY. O yes, *&c.* The Court adjourns

till to Morrow Morning, at seven of the Clock.

OBSER. The Prisoners were remanded to Newgate, where they remained till next Morning, and then were brought unto the Court, which being sat, they proceeded as followeth.

CRY. O yes, *&c.* Silence in the Court, upon pain of Imprisonment.

CLER. Set *William Penn* and *William Mead* to the Bar. Gentlemen of the Jury, answer to your Names: *Tho, Veer, Edw. Bushel, John Hammond, Henry Henly, Henry Michell, John Brightman, Charles Milson, Gregory Walklet, John Baily, William Leaver, James Damask, William Plumstead.* Are you all agreed of your Verdict?

JUR. Yes.

CLER. Who shall speak for you?

JUR. Our Fore-man.

CLER. Look upon the Prisoners. What say you? Is *William Penn* Guilty of the Matter whereof he stands indicted, in Manner and Form, &c., or Not Guilty?

FORE-MAN. Here is our Verdict in Writing, and our Hands subscribed.

OBSER. The Clerk took the paper, but

was stopt by the Recorder from reading of it; and he commanded to ask for a positive Verdict.

FORE-MAN. That is our Verdict; we have subscribed to it.

CLER. How say you? Is William Penn Guilty, &c., or Not Guilty?

FORE-MAN. Not guilty.

CLER. How say you? Is William Mead Guilty, &c., or Not Guilty?

FORE-MAN. Not guilty.

CLER. Then hearken to your Verdict; you say that William Penn is Not Guilty in Manner and Form as he stands indicted; you say that *William Mead* is Not guilty in Manner and Form as he stands indicted, and so you say all?

JUR. Yes, we do so.

OBSER. The Bench being unsatisfied with the Verdict, commanded that every Person should distinctly answer to their Names, and give in their Verdict, which they unanimously did, in saying, Not Guilty, to the great Satisfaction of the Assembly.

REC. I am sorry, Gentlemen, you have followed your own Judgments and Opinions, rather than the good and wholsome Advice, which was given you; God keep

my Life out of your Hands; but for this the Court Fines you forty Mark a Man; and Imprisonment till paid. At which *Penn* stept up towards the Bench, and said:

PEN. I demand my Liberty, being freed by the Jury.

MAY. No, you are in for your Fines.

PEN. Fines, for what?

MAY. For contempt of the Court.

PEN. I ask, if it be according to the Fundamental Laws of *England,* that any English-Man should be Fined or Amerced, but by the Judgment of his Peers or Jury; since it expressly contradicts the fourteenth and twenty-ninth Chap. of the great Charter of *England*, which say, No Free-Man ought to be amerced, but by the Oath of good and Lawful Men of the Vicinage.

REC. *Take him away, Take him away, take him out of the Court.*

PEN. I can never urge the Fundamental Laws of *England*, but you cry, Take him away, take him away. But it is no wonder, *Since the Spanish Inquisition hath so great a place in the Recorder's Heart.* God Almighty, who is just, will judge you all for these things.

OBSER. They haled the Prisoners into

the Bale-dock, and from thence sent them to *Newgate*, for Non-payment of their Fines; and so were their *Jury*.

L'ENVOIE

So ended the "Tryal." The contumacious jurors did not long remain in duress. The pertinacious Bushel, being a man of substance, took steps to legally rescue himself and fellows, and soon succeeded. The affair had an important after echo at the trial in New York, of John Peter Zenger, the Palatine Printer, in 1735, for libelling Governor William Cosby, by telling the truth about his infringement of popular liberty, when the attempted forcing of the Penn jury was powerfully employed by Andrew Hamilton, attorney for the defense, to curb the efforts of Mr. Justice De Lancey to coerce the twelve. In his remarkable address — an address that solidified the foundation for liberty of the press and free speech on this continent and was a worthy preface to the Declaration of Independence drawn some forty years later — Hamilton said, concerning this "Tryal":

"Mr. *Penn* and *Mead* being Quakers, and having met in a peaceable Manner,

after being shut out of their Meeting House, preached in *Grace Church Street*, in *London*, to the People of their own Perswasion, and for this they were indicted; and it was said, *That they with other Persons, to the Number of 300. unlawfully and tumultuously assembled, to the Disturbance of the Peace, &c.* To which they pleaded *Not Guilty.* And the Petit Jury being sworn to try the Issue between the King and the Prisoners, that is, whether they were Guilty, according to the Form of the Indictment? Here there was no Dispute but they were assembled together, to the Number mentioned in the Indictment; *But Whether that Meeting together was riotously, tumultuously, and to the Disturbance of the Peace?* was the Question. And the Court told the Jury it was, and ordered the Jury to find it so; *For* (said the Court) *the Meeting was the Matter of Fact, and that is confessed, and we tell you it is unlawful, for it is against the Statute; and the Meeting being unlawful, it follows of Course that it was tumultuous, and to the Disturbance of the Peace.* But the Jury did not think fit to take the Court's Word for it, for they could neither find *Riot, Tumult*, or any Thing

tending to the *Breach of the Peace* committed at that Meeting; and they acquitted Mr. *Penn* and *Mead*. In doing of which they took upon them to judge both the *Law* and the *Fact*, at which the Court (being themselves true Cortiers) were so much offended, that they fined the Jury 40 Marks a piece, and committed them till paid. But Mr. *Bushel*, who valued the Right of a Juryman and the Liberty of his Country more than his own, refused to pay the Fine, and was resolved (tho' at a great Expence and trouble too) to bring, and did bring, his *Habeas Corpus*, to be relieved from his Fine and Imprisonment, and he was released accordingly; and this being the Judgment in his Case, it is established for Law, *That the Judges, how great soever they be, have no Right to Fine, imprison, or punish a Jury, for not finding a Verdict according to the Direction of the Court.* And this I hope is sufficient to prove, That Jurymen are to see with their own Eyes, to hear with their own Ears, and to make use of their own Consciences and the Understandings, in judging of the Lives, Liberties or Estates of their Fellow Subjects."

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